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AMENDED IN ASSEMBLY APRIL 2, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 566

Introduced by Assembly Member Wieckowski
(Coauthors: Assembly Members Alejo, Bocanegra, Chau, Dickinson,
Garcia, Gomez, Jones-Sawyer, Muratsuchi, Perea, Rendon,
Skinner, Stone, and Williams)

February 20, 2013

An act to add and repeal Section 71621 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 566, as amended, Wieckowski. Courts: personal services contracting.

The Trial Court Employment Protection and Governance Act establishes a trial court employee personnel system that provides authority to hire trial court personnel, regulates the classification and compensation of trial court employees, labor relations, and personnel

files, and requires each trial court to establish a system of employment selection and advancement and an employment protection system.

Existing law authorizes state agencies to use personal services contracts to achieve cost savings if specified standards are satisfied, including, among other things, the contract does not cause the displacement of civil service employees and the contract is awarded through a publicized, competitive bidding process. The State Personnel Board is required to review a proposed contract upon the request of an employee organization for compliance with those standards.

This bill, until January 1, 2020, would establish specified standards if a trial court intends to enter into a new contract, or renew or extend an existing contract, for any services that are currently or customarily performed by that trial court's employees. Among other things, the bill would require the trial court to clearly demonstrate that the contract will result in actual overall cost savings to the trial court for the duration of the entire contract as compared with the trial court's actual costs of providing the same services. The bill would require a contract for services in excess of \$100,000 annually to include specific, measurable performance standards and provisions for audits on performance and cost savings, as specified.

This bill would provide that these standards apply to any contract entered into, renewed, or extended after the effective date of this measure. The bill would provide that its provisions do not apply to a contract under specified circumstances, including when services are incidental to a contract for the purchase or lease of real or personal property.

This bill would require each trial court to provide a report by February 1, 2014, to the chairperson of the Joint Legislative Budget Committee and the chairpersons of the Senate Judiciary Committee and the Assembly Judiciary Committee if the trial court entered into a contract between July 1, 2013, and the effective date of this measure for services that were provided or are customarily provided by its trial court employees if the contract has a term extending beyond March 31, 2014. This report would be required to include specified information relating to these contracts, including an analysis of whether the contract resulted in the displacement of trial court employees.

The bill would provide that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 71621 is added to the Government Code, to read:

71621. (a) If a trial court intends to enter into a new contract, or renew or extend an existing contract, for any services that are currently or customarily performed by that trial court's employees, all of the following requirements shall apply:

(1) The trial court shall clearly demonstrate that the contract will result in actual overall cost savings to the trial court for the duration of the entire contract as compared with the trial court's actual costs of providing the same services. In comparing costs, all of the following shall occur:

(A) The trial court's additional cost of providing the same services as proposed by the contract shall be included. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the services.

(B) The trial court's indirect overhead costs shall not be included unless those costs can be attributed solely to the function in question and would not exist if that function was not performed by the trial court. For the purposes of this subparagraph, "indirect overhead costs" means the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) The cost of a contractor providing a service for any continuing trial court costs that would be directly associated with the contracted function shall be included. Continuing trial court costs shall include, but not be limited to, costs for inspection, supervision, and monitoring.

(2) The contract shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Contracts shall be eligible for approval if the contractor's wages are at the industry's level and do not ~~significantly~~ materially undercut trial court pay rates.

(3) The contract shall not cause an existing trial court employee to incur a loss of his or her employment or employment seniority, a reduction in wages, benefits, or hours, or an involuntary transfer to a new location requiring a change in residence.

(4) The contract shall not be approved if, in light of the services provided by trial courts and the special nature of the judicial

function, it would be inconsistent with the public interest to have the services covered by the contract performed by a private entity.

(5) The contract shall be awarded through a publicized, competitive bidding process.

(6) The contract shall include specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurances that the contractor's hiring practices meet applicable nondiscrimination standards.

(7) The contract shall provide that it may be terminated at any time by the trial court without penalty if there is a material breach of the contract and notice is provided within 30 days of termination.

(8) If the contract is for services in excess of one hundred thousand dollars (\$100,000) annually, all of the following shall occur:

(A) The trial court shall require the contractor to disclose all of the following information as part of its bid, application, or answer to a request for proposal:

(i) A description of all charges, claims, or complaints filed against the contractor with a federal, state, or local administrative agency during the prior 10 years.

(ii) A description of all civil complaints filed against the contractor in a state or federal court during the prior 10 years.

(iii) A description of all state or federal criminal complaints or indictments filed against the contractor, or any of its officers, directors, or managers, at any time.

(iv) A description of any debarments of the contractor by a public agency or licensing body at any time.

(B) The trial court shall include in the contract specific, measurable performance standards and provisions for a performance audit by the trial court, or an independent auditor approved by the trial court, to determine whether the performance standards are being met and whether the contractor is in compliance with applicable laws and regulations. The trial court shall not renew or extend the contract prior to receiving and considering the audit report.

(C) The contract shall include provisions for an audit by the trial court, or an independent auditor approved by the trial court, to determine whether and to what extent the anticipated cost savings have actually been realized. The trial court shall not renew

1 or extend the contract before receiving and considering the audit
2 report.

3 (9) The contract shall be awarded only if the amount of savings
4 clearly justifies the size and duration of the contracting agreement.

5 (b) *For purposes of subdivision (a), "services that are*
6 *customarily performed" includes services that have been*
7 *historically performed by trial court employees.*

8 ~~(b)~~

9 (c) This section does not preclude a trial court or the Judicial
10 Council from adopting more restrictive rules regarding the
11 contracting of court services.

12 ~~(e)~~

13 (d) This section does not apply to a contract in any of the
14 following circumstances:

15 (1) The contract is between a trial court and another trial court
16 or a government entity for services to be performed by employees
17 of the other trial court or employees of the government entity.

18 (2) The contract is for a new trial court function and the
19 Legislature has specifically mandated or authorized the
20 performance of the services by independent contractors.

21 (3) The services contracted for are of such a highly specialized
22 or technical nature that the necessary expert knowledge, experience,
23 and ability are not available from the court's trial court employees.

24 (4) The services are incidental to a contract for the purchase or
25 lease of real or personal property. Contracts described in this
26 paragraph, known as "service agreements," shall include, but not
27 be limited to, agreements to service or maintain office equipment
28 or computers that are leased or rented. *Contracts described in this*
29 *paragraph shall not include agreements to operate equipment or*
30 *computers, except as necessary to service or maintain that*
31 *equipment.*

32 (5) The legislative, administrative, or legal goals and purposes
33 cannot be accomplished through the utilization of trial court
34 employees because of the need to protect against a conflict of
35 interest or to ensure independent and unbiased findings in situations
36 where there is a clear need for an independent, outside perspective.

37 (6) Due to an emergency, a contract is necessary for the
38 immediate preservation of the public health, welfare, or safety.

39 (7) The contractor will conduct training courses for which
40 appropriately qualified trial court employee instructors are not

1 available from the court, provided that permanent instructor
2 positions shall be filled through the process for hiring trial court
3 employees.

4 (8) The services are of such an urgent, temporary, or occasional
5 nature that the delay incumbent in their implementation through
6 the process for hiring trial court employees would frustrate their
7 very purpose. This paragraph shall not apply to the services of
8 official court reporters, but individual official reporters pro tempore
9 may be used by a trial court when the criteria of this paragraph are
10 satisfied.

11 (9) The contract is a personal services contract developed
12 pursuant to rehabilitation programs in accordance with Sections
13 19403 and 19404 of the Welfare and Institutions Code, pursuant
14 to habilitation programs in accordance with Chapter 13
15 (commencing with Section 4850) of Division 4.5 of the Welfare
16 and Institutions Code, or pursuant to a program vendored or
17 contracted through a regional center or the State Department of
18 Developmental Services in accordance with the Lanterman
19 Developmental Disabilities Services Act (Division 4.5
20 (commencing with Section 4500) of the Welfare and Institutions
21 Code), and the contract will not cause an existing trial court
22 employee to incur a loss of his or her employment or employment
23 seniority; a reduction in wages, benefits, or hours; or an involuntary
24 transfer to a new location requiring a change in residence.

25 (10) The contract is for the services of any court interpreter.
26 Contracts for the services of any court interpreter, and restrictions
27 on contracting out interpreter services, shall be governed by the
28 Trial Court Interpreter Employment and Labor Relations Act
29 (Chapter 7.5 (commencing with Section 71800)) and any
30 memorandum of understanding or agreement entered into pursuant
31 to that act, or by the other provisions of this chapter, the Trial Court
32 Employment Protection and Governance Act, and any
33 memorandum of understanding or agreement entered into pursuant
34 to that act, as applicable.

35 ~~(11) The contractor will provide equipment, materials, facilities,~~
36 ~~or support services that could not feasibly be provided by the court~~
37 ~~in the location where the services are to be performed. This~~
38 ~~paragraph shall not apply to services contracted in order to open~~
39 ~~closed courthouses if those services were performed by trial court~~
40 ~~employees before the closure.~~

1 ~~(d)~~

2 (e) This section shall remain in effect only until January 1, 2020,
3 and as of that date is repealed, unless a later enacted statute, that
4 is enacted before January 1, 2020, deletes or extends that date.

5 SEC. 2. Section 71621 of the Government Code, as added by
6 Section 1 of this act, shall apply to any contract entered into,
7 renewed, or extended after the effective date of this act.

8 SEC. 3. (a) Each trial court shall provide a report by no later
9 than February 1, 2014, to the chairperson of the Joint Legislative
10 Budget Committee and the chairpersons of the Senate Judiciary
11 Committee and Assembly Judiciary Committee if the trial court
12 entered into a contract between July 1, 2013, and the effective date
13 of this act, for services that were provided or are customarily
14 provided by its trial court employees and that contract has a term
15 extending beyond March 31, 2014. The report shall provide the
16 following information for each of these contracts:

17 (1) A copy of the contract.

18 (2) An analysis of whether the contract would have been
19 permissible under the standards set forth in Section 71621 of the
20 Government Code, as added by Section 1 of this act.

21 (3) An analysis of whether the contract resulted in the
22 displacement of trial court employees.

23 (4) An analysis of whether the contract involves the use of
24 contractors to perform the type of services that were customarily
25 performed by trial court employees.

26 (b) It is the intent of the Legislature to consider the reduction
27 of future budget appropriations to each trial court by the amount
28 of any contract analyzed pursuant to subdivision (a) if the
29 Legislature concludes that the contract would not have been
30 permissible under the standards provided in Section 71621 of the
31 Government Code, as added by Section 1 of this act.

32 SEC. 4. The provisions of this act are severable. If any
33 provision of this act or its application is held invalid, that invalidity
34 shall not affect other provisions or applications that can be given
35 effect without the invalid provision or application.

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